INDEX TO APPENDIXES PAGE

"A" MEMORANDUM IN THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT .....A-1 thru A-9

"B" ORDER DENYING PETITION FOR RE-HEARING ETC. IN THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JULY 9, 1982 .....B-1 thru B-2

"C" NOTICE OF INTENTION TO ABATE .....C-1 thru C-3

"D" ORDINANCE, STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED .....D-1 thru D-32

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIDNEY L. SOFFER,	)	No. 81-5240
	)	
Plaintiff-Appellant,	)	D.C. No. CV 78-4435 AWT
	)	
v.	)	MEMORANDUM
	)	
CITY OF COSTA MESAA, et al.,	)	
	)	
Defendants-Appellees.	)	
	)	

Appeal from the United States District Court for the Central District of California
The Honorable A. Wallace Tashima, Presiding
Argued and Submitted March 5, 1982
Decided:

Before: HUG, TANG and PREGERSON, Circuit Judges.

Pursuant to a city nuisance abatement ordinance, the City of Costa Mesa, California towed three cars from Sidney Soffer's front yard. Soffer then brought this 42 U.S.C.

§1983 action against the City, city zoning officer James Weir, and City Attorney Robert Campagna, alleging that the ordinance was unconstitutionally vague and overbroad and that the ordinance, as applied, denied him due process of law. The district court entered a judgment for the defendants upon a jury verdict.

On appeal, Soffer asserts that the district court erred in failing to find, as a matter of law, that the ordinance was unconstitutional and that the notice he received was inadequate. In addition, he asserts that the trial court erred in failing to give a requested jury instruction. Because these contentions lack merit, we affirm the judgment of the district court.

The ordinance declares the storage of "wrecked, dismanteld or inoperative" vehicles, visible from the street, on public or private property, to be a public nuisance and grants the City Council authority to abate such nuisances by having the vehicles removed in accordance with certain notice and hearing requirements. City of Costa Mesa Ordinance No. 73-13, Article 6, Section 1. Soffer's vehicles, which were not registered and did not have current license plates attached, were determined to be "inoperative" within the meaning of the ordinance because they did not qualify to be operated on the highways under the California Vehicle Code. Soffer contends that the ordinance is facially vague and overbroad because it fails to

define the term "inoperative." Thus, he argues, the determination whether a vehicle is "inoperative," and therfore constitutes a public nuisance, is impermissibly left to the subjective evaluation of a city official. This contention is unpersuasive.

The ordinance prohibits a person from storing upon his property any automobile that "does not qualify to be operated on the highways under the Vehicle Code of the State of California ...." City of Costa Mesa Ordinance No. 73-13, Article 6, Section 20. The term "inoperative vehicle" has a defined meaning under the California Vehicle Code. California Vehicle Code, Section 5202 provides that a vehicle may not be "operated" unless the license plate is "attached and

displayed on the vehicle." Section 4000 of the California Vehicle Code prohibits an individual from operating an unregistered vehicle. Thus, the ordinance is neither vague nor overly broad because, when applied in conjunction with the Vehicle Code, it gives a person of ordinary intelligence fair notice that his contemplated conduct is prohibited. See Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972).

Moreover, there is little, if any, danger of arbitrary or discriminatory enforcement of the ordinance. Enforcement of the ordinance is not left to the subjective evaluation of Costa Mesa's enforcement officers as to the meaning of the term "inoperative." As demonstrated by the facts of

this case, city officials are governed by the meaning of the term "inoperative" under the California Vehicle Code.

Soffer next asserts that the ordinance, as applied, deprived him of due process of law because the pre-abatement notice that set forth the time limit for requesting a hearing was constitutionally inadequate. We disagree. The Due Process Clause requires that parties whose rights are to be affected are entitled to be notified of the proposed action and they are entitled to be heard. Fuentes v. Shevin, 407 U.S. 67, 80 (1972); Baldwin v. Hale, 68 U.S. 223, 233 (1863). It is also a fundamental requirement of due process that the opportunity to be heard be granted "at a meaningful time and in a

meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976), quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965). The question of what form of due process is constitutionally adequate must be answered in relation to the circumstances of each particular case; due process varies with the subject matter and requirements of each situation. See Fuentes v. Shevin, 407 U.S. 67 (1972). An examination of the record in this case indicates that the notice and the opportunity for a hearing that Soffer received satisfied the requirements of due process.

Finally, Soffer contends that the district court erred in failing to give his proposed juryinstruction on the requirements of due process. The substance of Soffer's

proposed instruction was that if the jury concluded that the cars did not, in fact, constitute public nuisances, it must find that Soffer's property was taken without due process of law. Soffer asserts that without this instruction the jury was given no guidance concerning what factors were necessary to a determination that the City's procedure failed to comply with due process.

The trial court fully set foth the due process requirements in Instructin C. Moreover, Soffer's proposed instruction was not an accurate statement of the fundamental requirements of due process. Even if Soffer's vehicles did not, in fact, constitute public nuisances, it does not necessarily follow that the City's action in

removing them amounted to a deprivation of property without due process of law. See Rogers v. Okin, 634 F. 2d 650, (1st Cir. 1980). The real issue, as properly set forth in Instruction C, was whether Soffer had notice and an opportunity to be head before the cars were removed.

The judgment of the district court is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIDNEY L. SOFFER,	)	No. 81-5240
	)	
Plaintiff-Appellant,	)	D.C. No. CV 78-4435 AWT
	)	
v.	)	ORDER
	)	
CITY OF COSTA MESAA, et al.,	)	
	)	
Defendants-Appellees.	)	
	)	

Appeal from the United States District Court for the Central District of California

Before: HUG, TANG and PREGERSON, Circuit Judges

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the en banc suggestion and no judge of the court

has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

CITY OF COSTA MESA
California 92626 P.O. Box 1200

From the Office of the Planning Dept.

NOICE OF INTENTION TO ABATE AND REMOVE
AN ABANDONED, WRECKED, DISMANTLED
OR INOPERATIVE VEHICLE OR PARTS THEREOF
AS A PUBLIC NUISANCE

To: Sidney Lester Soffer
Address: 900 Arbor St.
Costa Mesa, Ca. 92626

Description: Registered Owner: Not Available
Legal Owner: Not Available
License No. Not Available

Temporary DMV Receipt No. 6299044 shows date sold 8/19/75, Sidney Lester Soffer, Cadillac, 2 door seda, medium blue, roof shows deterioration, stored on front yard.

As owner of the land on which said veicle (or said parts of a vehicle) is located, you are hereby notified that within ten (10) days of the mailing of this notice of intention you may:

1. Remove said vehicle (or parts of a vehicle)

2. Request a public hearing

APPENDIX "C"

3. Submit a sworn written statement denying responsibility for the presence of said vehicle (or parts of a vehicle) on said land with your reasons for denial

Such statement will be construed as a request for hearing at which your presence is not required. You may appear at any hearing request by you or the owner of the vehicle, or in lieu thereof, present a sworn statement as aforesaid (#3 above) in time for consideration at such hearing.

All request for hearing, sworn statements and/or other correspondence should be addresed to:

Attention: James T. Weir, P.O. Box 1200, 77 Fair Drive, Costa Mesa, Ca. 92626

You are hereby notifeid that, upon failure to initiate at least one of the above actions within ten (10) days of the mailing of this notice, the City of Costa Mesa shall have the authority to abate and remove said nuisance without a public hearing and the costs thereof together with administrative costs, assessed to you as owner of the land on which said vehicle (or parts of a vehicle) is located.

CITY OF COSTA MESA

NOTICE MAILED OCTOBER 25, 1977

BY (JAMES WEIR)
ENFORCEMENT OFFICER

ORDINANCE NO. 73-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA PROVIDING FOR THE ABATEMENT AND REMOVAL AS PUBLIC NUISANCES OF ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES OR PARTS THEREOF FROM PRIVATE PROPERTY OR PUBLIC PROPERTY, NOT INCLUDING HIGHWAYS, AND RECOVERY OF COSTS OF ADMINISTRATION THEREOF AS AUTHORIZED BY SECTION 22660 VEHICLE CODE; BY AMENDING THE CITY OF COSTA MESA MUNICIPAL CODE, ADDING THERETO ARTICLE 6 OF CHAPTER III.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with the determination made and the authority granted by the State of California under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the City Council of the City of Costa Mesa hereby makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property not including highways is hereby found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare of the public.

Accodingly, there is hereby enacted Division I and II of Article 6, Chapter III Costa Mesa Municipal Code which shall read as follows:

SECTION 2. "ARTICLE 6

ABANDONED VEHICLES

DIVISION I

Section 1. Public Nuisance The presence of an abandoned, wrecked, dismanteled or inoperative vehicle or parts thereof, on private or public property not including highways, except as expressly hereinafter permitted, is heeby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this Ordinance.

Section 2. Definitions. For the purpose of this Chapter, the following terms shall have the following meanings unless it is clear from the context that a different meaning is intended:

(a) 'VEHICLE' means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracts.

(b) 'HIGHWAY' means a way or place or whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.

(c) 'PUBLIC PROPERTY' does not include 'highway'.

(d) 'OWNER OF THE LAND' means the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.

(e) 'OWNER OF THE VEHICLE' means the last registered owner and legal owner of record.

Section 3. Exclusions. This chapter shall not apply to:

(a) A vehicle, or parts thereof, completely enclosed within a building in a lawful manner, and not visible from the street or other public or private property; or

(b) A vehicle, or parts thereof, stored or parked in a lawful manner on private property in connection with the business of a license dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

(c) A vehicle or parts thereof stored or parked on private or public property pursuant to permit granted by the City of Costa Mesa for that purpose.

Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapte 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this Ordinance.

Section 4. Enforcement. Except as otherwise provided for herein, the provisions of this Ordinance shall be administered and enforced by the City Council who may from time to time delegate all or any portion of the duties hereunder to the

City Manager or his duly authorized agents. In the enforcement of this Ordinance such agents may enter upon private or public property eo examine a vehicle or parts thereof, or obtain information as to the identity of a vehicle and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this Ordinance.

Section 5. Franchise Removal. When the City Council has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property o r public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance, pursuant to this Ordinance.

Section 6. Administrative Costs. The City Council shall from time to time determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or parts thereof) under this chapter.

Section 7. Abatement. Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property within the City, the City Council shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed herein.

Section 8. Notice. A ten (10) day notice of intention to abate and remove

the vehicle, or parts thereof, as a public nuisance shall be mailed by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE.

(Name and address of owner of the land)

As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to (Chapter III, Article 6, Division I, Costa Mesa

Municipal Code) has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismanteled or inoperative vehicle registered to _____ _____ license number _____, which constitutes a public nuisance.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within 10 days from the date of mailing of this notice, and upon your failure to do so the same will be abated and removed by the City of Costa Mesa, and the costs thereof, together with administrative costs, assessed to you as owner of the land on which

said vehicle (or said parts of a vehicle) is located.

As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within 10 days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the City Council within such 10 day period, the City of Costa Mesa shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such 10 day period denying responsibility for the presence of said vehicle

(or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request for hearing at which your presence is not required. You may appear in person at any hearing requested byyou or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice Mailed _____
(Date)

CITY OF COSTA MESA

By_____
City Manager

NOTICE OF INTENTION TO ABATE AND REMOVE AND ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE.

(Name and address of last registered and/or legal owner of record of vehicle -- notice should be given to both if different)

As last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc.) you are hereby notified that the undersigned pursuant to Chapter III, Article 6, Division I, Costa Mesa Municipal Code has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provisions of said Municipal Code.

You are hereby notified to abate said nuisance by the removal of said vehicle

(or said parts of a vehicle) within 10 days from the date of mailing of this notice.

As registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified that you may, within 10 days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the Planning Commission within such 10 day period, the City Council shall have the authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing.

Notice Mailed:_____

CITY OF COSTA MESA

By_____
City Manager

Section 9. Public Hearing. Upon request by the owner of the vehicle or owner of the land received by the City within 10 days after the mailing of the notices of intention to abate and remove, a public hearing shall be held by the Planning Commission on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle or parts thereof against the property on which it is located.

Section 10. Written Denial - Land Owner If the owner of the land submits a sworn written statement denying responsi-

bility for the presence of the vehicle on his land within such 10 day period, said statement shall be construed as a request for a hearing which does not require his presence. Notice of the hearing shall be mailed, by registered mail, at least 10 days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said 10 days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle or parts thereof as a public nusiance (sic) without holding a public hearing.

Section 11. Hearing Body - Planning Commission

All hearings under this Ordinance shall be held before the Planning Commission which shall hear all facts and testimony it deems pertinent. Said facts and testimony may include testimony on the condition of the vehicle or parts thereof and the circumstances concerning its location on the said private property or public property. The Planning Commission shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the

vehicle on the land, with his reasons for such denial.

Section 12. Hearing Body - Powers

The Planning Commission may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purposes of this Ordinance. It may delay the time for removal of the vehicle or parts thereof if, in the opinion, the circumstances justify it. At the conclusion of the public hearing, the Planning Commission may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled, or is inoperative on private or public property and order the same removed from the property as a public nusiance (sic)

and disposed of as hereinafter provided and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that he has not subsequently acquiesced in its presence, the Planning Commission shall not assess the costs of administration or removal of the vehicle against the property upon which the ve-

hicle is located or otherwise attempt to collect such costs from such owner of the land.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his land but does not appear, or if an interested party makes a written prsentation to the Planning Commission but does not appear, he shall be notified in writing of the decision.

Section 13. Appeal. Any interested party may appeal the decision of the Planning Commission by filing a written notice of appeal with the said City Clerk within five (5) days after its decision.

Such appeal shall be heard by the City Council which may affirm, amend or reverse the order or take other action deemed appropriate.

The clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in Section 8.

In conducting the hearing the City Council shall not be limited by the technical rules of evidence.

Section 14. Disposal. Five (5) days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance, or five (5) days from the date of mailing of notice of the decision if such notice is required by Section 12, or

15 days after such action of the governing body authorizing removal following appeal, the vehicle or parts thereof may be disposed of by removal to a scrapyard or automobile dismantler's yard. After a vehicle has been removed it shall not thereafter be reconstructed or made operable.

Section 15. Department of Motor Vehicles Notice. Within five (5) days after the date of removal of the vehicle or parts thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles any evidence of registration

available, including registration certificates, certificates of title and license plates.

Section 16. Costs of Removal Assessed. If the administrative costs and the cost of removal which are charged against the owner of a parcel of land pursuant to Section 12 are not paid within 30 days of the date of the order, or the final disposition of an appeal therefrom, such costs shall be assessed against the parcel of land pursuant to Section 3877.5 of the Government Code, and shall be transmitted to the tax Collector for collection. Said assessment shall have the same priority as other city taxes.

Section 17. Nonexclusive Remedy.

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles with the City of Costa Mesa. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by the City of Costa Mesa, the State, or any other legal entity or agency having jurisdiction.

DIVISION II

AUTO WRECKING, DISASSEMBLING AND DISMANTLING BUSINESS

Section 18. Dismantling of Vehicles - Eight Foot Fence Required.

Any person in the business of dismantling or disassembling automobiles, trucks, or vehicles of any kind, except

within a building, shall dismantle or disassemble such automobiel truck, or other vehicle behind a fence not less than eight (8) feet in height, and said fence must be located a distance of twenty-five (25) feet from the front and side street lines of the piece of land, and so constructed as to conceal all material upon said property, extending around all sides of the lot or piece of land upon which said disassembling or dismantling is conducted.

Section 19. Report to Police. Contents.

Before dismantling or disassembling any automobile, truck or other vehicle, the person in the business of dismantling

and proposing to do so must first make a report in writing to the Chief of Police of the City giving the name and make of the automobile or truck, the model thereof, the owner if known, the State license number and the engine number thereof, and the manner in which said automobile, truck or other vehicle was obtained; and no such automobile, truck or other vehicle shall be dismantled earlier than three (3) hours after such report is made.

Section 20. Storing of Dismantled Vehicles.

No person shall store or allow to be stored upon his property any automobile, truck or other vehicle which is either dismantled or disassembled, either in

whole or in part, or does not qualify to be operated on the highways under the Vehicle Code of the State of California, without first obtaining a permit from the City Council.

Section 21. Same. Exception. Licensed Business.

The provisions of this Article shall not apply to any peson, firm or corporation engaged in the business of repairing automobiles or trucks or other vehicles who is operating under a business license issued by the City, and whose occupation or business is not dismantling, wrecking or disassembling automobiles, trucks or vehicles of any kind."

SECTION 3. Section 5211 of Chapter V, Article 2 is hereby amended to read as follows:

"Section 5211 Heavy Objects - Disposal Of.

Every person occupying or having charge or control of any premises in the City shall, at least once within each calendar month, collect and dispose of all waste material and debris, and all other material not included in the meaning of waste material as defined in Section 5200, which may have accumulated on his premises; provided that building or construction waste or debris need be removed upon completion of construction operations. All such waste and debris in this

section defined shall be removed to such dump grounds as may be provided or designated by the City or County."

SECTION 4. Sections 9298.15 through 9298.18 of the Costa Mesa Municipal Code are hereby repealed having been by this Ordinance re-enacted as Division II or Article 6, Chapter III Costa Mesa Municipal Code. All other ordinances or parts thereof in conflict herewith are hereby repealed.

SECTION 5. This Ordinance shall take effect and be in full force and effect thiryt (30) days from and after its passage, and before the expiration of fifteen (15) days after its passage, shall be published once in the Orange Coast Daily

Pilot, a newspaper or general circulation printed and published in the City of Costa Mesa, together with the names of the members of the City Council voting for and against the same.

PASSED AND ADOPTED this 16th day of April, 1973.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

§23. When notice complete

The giving of notice by personal delivery is complete upon delivery of a copy of the notice to the person to be notified. The giving of notice by mail is complete upon the expiration of four days after deposit of the notice in the mail, except that in the case of a notice informing any person of an offense against him under Section 40001, the notice is complete 10 days after mailing.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any peson of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "D"